

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 12/7/2005

ITEM No. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT
**Cobb Residence
(13-BA-2005)**

REQUEST
Request to approve request a variance from Article V. Section 5.204.G regarding walls, fences and landscaping within the required side yard and Article VII. Section 7.104 regarding height limitations on fences, hedges, shrubbery, etc., on corner lots

OWNER
Shirlee A & William E Cobb
480-451-5998

APPLICANT CONTACT
William E Cobb
Shirlee A & William E Cobb
480-451-5998

LOCATION
11775 N 101st St



CODE ENFORCEMENT
ACTIVITY
A Notice of Violation was issued on August 10, 2005.

PUBLIC COMMENT
The applicant notified surrounding neighbors and submitted a petition of 9 neighbors supporting the request. One of the neighbors subsequently submitted a letter suggesting the wall and landscaping obstructs views. (See Public Comment Attachment #7)

ZONE
Single Family Residential District (R1-35)

ZONING/DEVELOPMENT
CONTEXT
The subject site is a corner lot (Lot 4) of Cherokee Glen subdivision, which also includes the properties to the east and south. The subdivision was recorded in 1987 with 10 single-family lots having similar sizes, and is zoned Single Family Residential District (R1-35).

This subdivision is located at the southeast corner of 101st Street and Jenan Drive. Both streets have the same street right-of-way widths as originally dedicated with the final plat in 1988.

ORDINANCE
REQUIREMENTS
Zoning Ordinance Section 5.204.G. prohibits walls, fences, and hedges exceeding three-feet in height within a minimum forty (40) foot front yard building setback. This requirement applies to both street frontages for corner lots that abut a key lot.

Zoning Ordinance Section 7.104 repeats the height limitations on fences and hedges on corner lots.

DISCUSSION

A single-family home exists on the site, and this corner lot requires that the required front yard of forty (40) feet be provided on each street (101st Street and Jenan Drive). Walls, fences, and hedges exceeding three-feet in height are not allowed within the 40-foot front yard setback. The applicant recently constructed a 6-foot wall on the north side of the home without obtaining building permits, and a notice of violation was issued. This wall encroaches into the 40-foot setback along Jenan Drive. The new wall setback ranges from 15 to 21 feet.

The applicant wishes to obtain a variance in order to obtain a building permit to allow the new wall.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The applicant has indicated that the property is unique because it is adjacent to a key lot, and that this circumstance is not common within the immediate area. The applicant also indicates that there are numerous examples in the neighborhood of 6-foot tall sidewalls that are setback 15 feet from streets.

There are no site-specific features or adjacent land issues that present a special circumstance that might warrant this variance. The Zoning Ordinance has setback provisions for 6-foot tall walls for lots that abut a key lot and for lots that do not abut a key lot.

- 2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The applicant indicates that 40-foot setback requirement for 6-foot tall walls substantially limits the useable space of the property. The applicant also indicates that the proposed reduction of the setback would allow the property to become consistent with wall locations of the surrounding properties.

Other properties in the District are also subject to the same yard setback requirements. The property may continue to be used as a residence regardless of the outcome of this variance request.

- 3. That special circumstances were not created by the owner or applicant:**

The applicant states that the key lot that abuts the applicant's property was established at the time of the platting of the development, and was not caused by the applicant.

There are no site-specific features or adjacent land issues that present a special circumstance. There have been no changes to the size and configuration of the lot since it was platted in 1988.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:

The wall setback ranges from 15 to 21 feet, and transitions at the east and west ends to the 40-foot setback. The wall does not occupy the entire side yard and does not interfere with traffic visibility. Although neighbors signed a petition in support of the request, the neighbors to the east subsequently submitted a letter suggesting the wall and landscaping obstructs views.

STAFF CONTACT

Kira Wauwie, Project Coordinator
Report Author
Phone: 480-312-7061
E-mail: KWauwie@ScottsdaleAZ.gov

Tim Curtis, Project Coordination Manager
Phone: 480-312-4210
E-mail: Tcurtis@ScottsdaleAZ.gov

ATTACHMENTS

1. Project Description
2. Justification
3. Context Aerial
4. Aerial Close-up
5. Zoning Map
6. Photographs
7. Public Comment
8. Proposed Site Plan



ZONING ORDINANCE VARIANCE

Application Submittal Requirements

Project Description / Variance Details

Case Numbers: 668 - PA - 2005 / _____ - BA - _____

Project Name: _____

Location: 11775 N 101st STREET

Property Details:

☒ Single-Family Residential ☐ Multi-Family Residential ☐ Commercial ☐ Industrial

Use: residential Zoning: R-35

Number of Buildings: 2 Height: Varies

Setbacks: N - 40' S - 15' E - 15' W - 40'

Description of Request:

Section of the Zoning Ordinance to be varied: NORTH (SIDEYARD) SETBACK
SECTION 5.204.9 ; 7.104

Project Narrative:

REPLACE PRIOR SIDEWALL (CONCRETE BLOCK) LOCATED 40'+
FROM STREET WITH NEW CONCRETE BLOCK WALL LOCATED
16 FT FROM STREET (14.33 FT FROM GUTTER).

NEW SIDEWALL TO HAVE VARIABLE DISTANCES FROM STREET,
RANGING FROM 16 - 40' FT SO THAT NEW WALL IS NOT
A SINGLE LINEAR FEATURE.

APPROVE CONSTRUCTED WALL "AS-BUILT"

Scottsdale Ordinance Requires: DUE TO "KEY LOT" THAT ABUTS APPLICANT,
NORTH (SIDEYARD) SETBACK SET AT 40' (THE FRONT SETBACK FOR
THAT PROPERTY)

Request: ALLOW PRIOR SIDEWALL TO BE MOVED FROM 40' SETBACK
TO CURRENT CONSTRUCTED LOCATION (14.33 FT FROM GUTTER, 16' FROM
STREET), CONSISTENT W/ NORMAL 15' SIDE YARD SETBACK, "AS-BUILT."

Amount of Variance: 25' OF ADDITIONAL SIDEYARD CONVERTED TO
USEABLE SPACE.

Planning and Development Services Department

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088

#2

ZONING ORDINANCE VARIANCE

Justification for Variance

1. Special circumstances/conditions exist which do not apply to other properties in the district:

The applicant, located at 11775 N 101st Street, is located on the corner of 101st Street and Jenan; it is located within the Cactus Acres area, which consists of R-35 and R-43 properties. The property at 10125 E Jenan is identified as a "key lot" which then restricts the side yard setback for the applicant from the normal 15 feet for R-35/R-43 properties to 40 feet.

According to City staff, this is an unique property because it is adjacent to a "key lot;" this is not a common situation within the immediate area.

The general alignment of properties within this portion of Cactus Acres is north-south, with the exception of three lots in Cherokee Glenn (the applicant is one of 10 lots that are part of this development) that are aligned east-west. As such, there are numerous examples of sidewalls that are located 15 feet from streets (see attached photographs of houses whose front entry faces a sidewall across the street).

2. Authorizing the variance is necessary for the preservation and enjoyment of substantial property rights:

The 40-foot setback represents a substantial limit to the side yard of the applicant; in fact, the setback is not useable space other than for landscaping purposes. There is no measurable value associated with the incremental footage in the setback in comparison to the standard 15-foot setback.

The existing 40-foot setback is only 12 feet from the northern wall of the house, giving the appearance of a "zero-lot-line" on a property that is R-35. A variance to allow the side wall to be placed at the typical setback of 15 feet results in a substantial increase in the useable property for the applicant:

- The useable side yard almost triples in size (the current useable space is approximately 1100 ft² and the new space would be approximately 3000 ft²)
- The useable back yard open space increases by 22 percent (the useable back yard open space is defined as space not currently occupied by a swimming pool, decking, or casita)

Most importantly, the 25 feet of additional side yard space allows the applicant's property to become consistent with the surrounding properties in terms of useable space and visual appearance. All other parcels in Cherokee Glen, as well as the immediate area, have full use of their lots due to their alignment and/or location, while the applicant does not.

The applicant constructed a replacement wall within the 40-foot setback and was subsequently issued a Notice of Zoning Violation by the City of Scottsdale dated 8/10/05, with a second notice on 9/1/05. The replacement wall is located approximately 14.2 – 14.33 feet from the top of gutter, 15.5 – 15.75 feet from the bottom of the gutter, and 16+ feet from the street's edge.

3. Special circumstances were not created by the owner or applicant.

The “key lot” that abuts the applicant's property was established at the time of platting the development (1988).

4. Authorizing the application will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare in general.

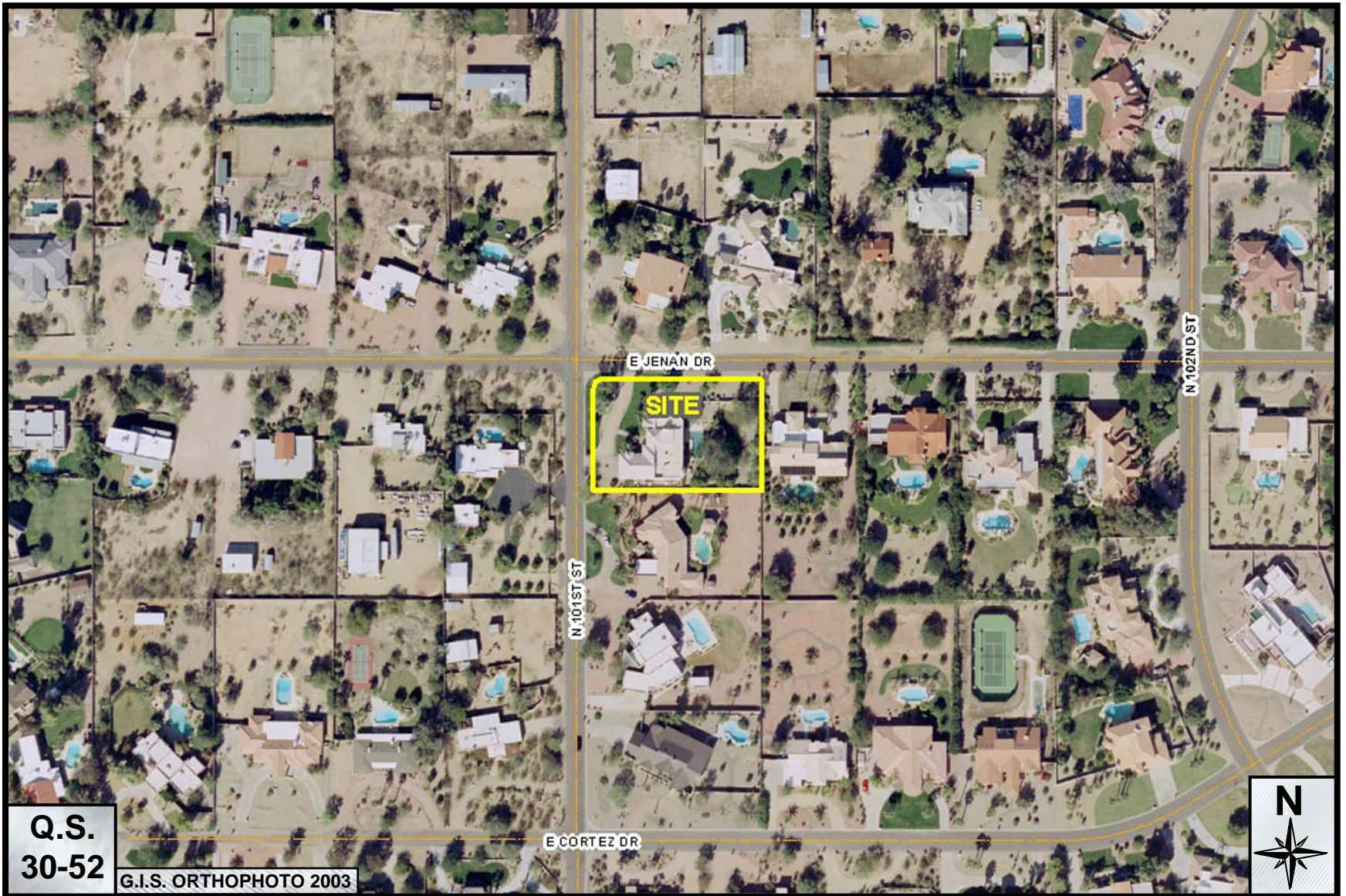
Attached to this submittal is the information letter provided to neighbors asking for either their concurrence, disapproval, or no opinion on the variance request. As documented, approval of the variance is not materially detrimental:

- The adjacent property owners, Tom and Anita Canty, concurred with the variance request.
- 100 % of the immediate neighbors interviewed were in favor of the request. In fact, additional neighbors have favorably commented on the exterior improvements, such as new paint and stone facing, currently being made by the applicant.

In terms of visual impact, there are numerous houses within the immediate area that have a front entry that faces a side wall. In order to mitigate visual impacts, the applicant designed the side wall to have staggered walls to break up a long straight-line visual effect (in other words, only a portion of the wall will be at a 15 foot setback; portions of the wall will be at an approximately 21 foot setback and portions of the wall will remain at the 40 foot setback).

In terms of public welfare, the primary issue associated with the variance request is safety – having an adequate line of sight from both the corner (101st and Jenan) and from the Canty's drive-way. Since the default setback is 15 feet, this distance is already deemed to be safe by the City of Scottsdale. To confirm that this is true, the applicant measured the distance from the back bumper to the driver's side window for a large pick-up truck and a large minivan. Both vehicles required 12 – 13 feet of clearance. Thus, the 15-foot setback provides a clear line of sight when a large vehicle is backing out of the Canty's driveway, without the vehicle entering into the street (see attached photographs).

The secondary benefit to public welfare is the increase in property value that will occur due to the increased useable back yard space for the applicant's property.



Cobb Residence

13-BA-2005

ATTACHMENT #3



Q.S.
30-52

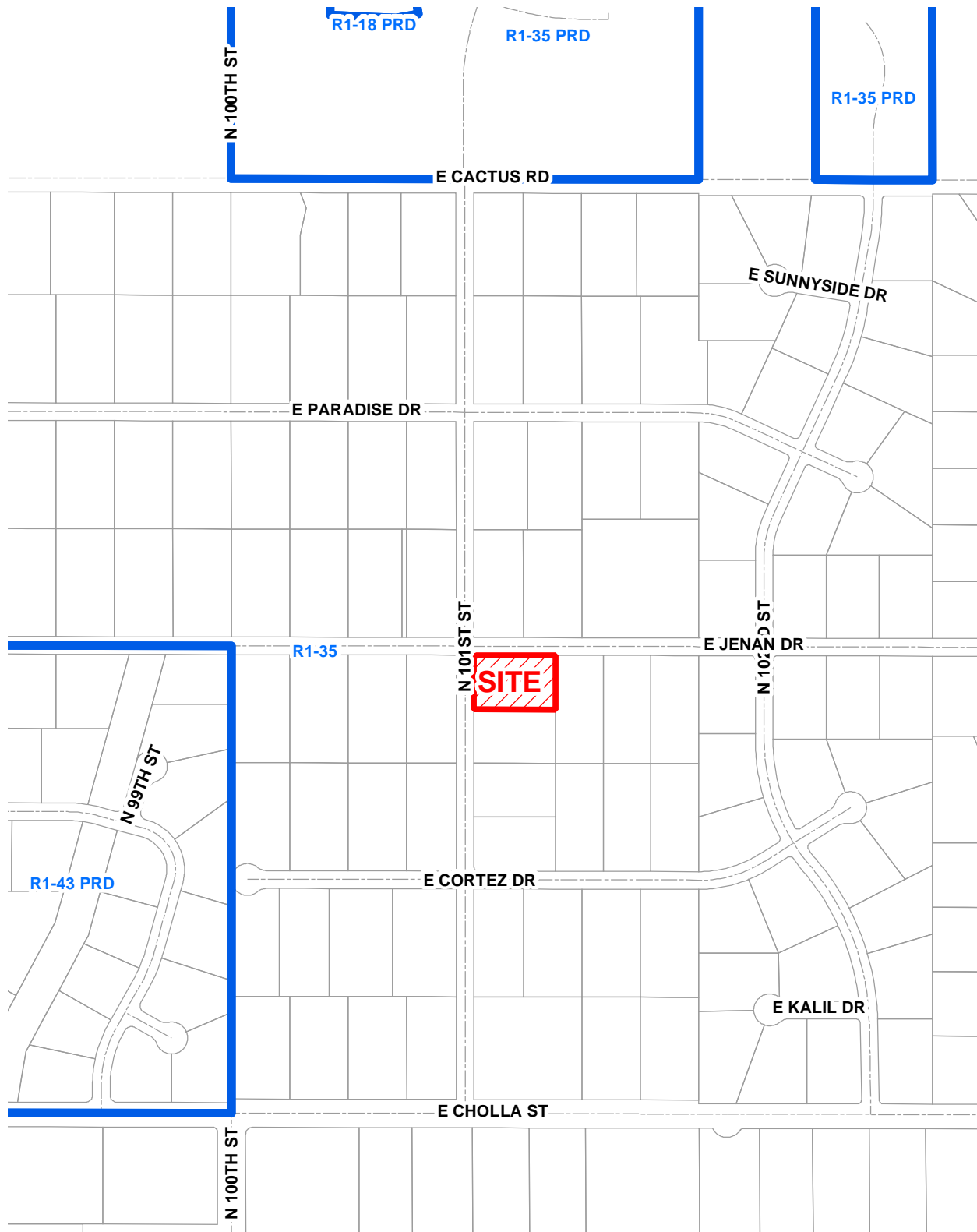
G.I.S. ORTHOPHOTO 2003



Cobb Residence

13-BA-2005

ATTACHMENT #4



13-BA-2005

ATTACHMENT #3

I

Houses that Face Long Linear Walls (per prior map)

1



3



2

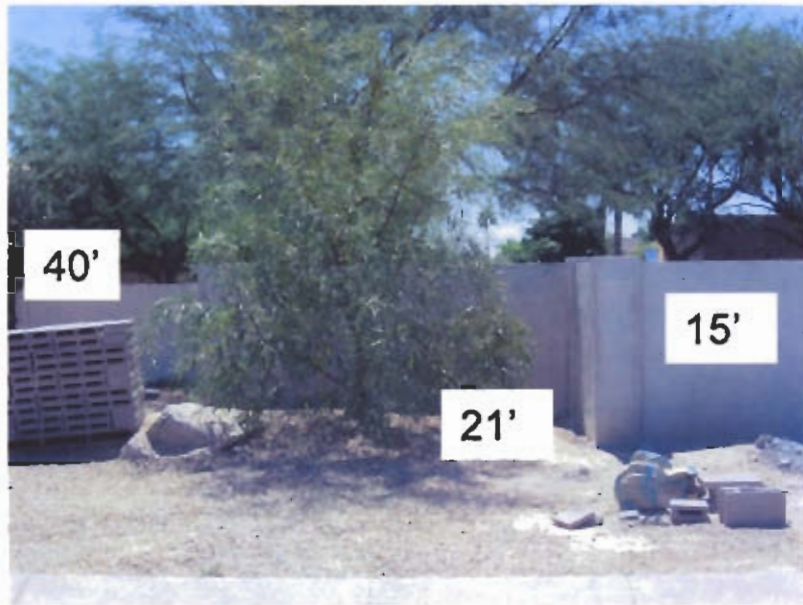


4



#6

Applicant's Constructed Wall Isn't Linear



#6

Safe View Corridor Maintained Along Jenan



View Looking East on Jenan
from Applicant's Driveway



View Looking West on
Jenan from Canty's
Driveway using Minivan

Safe View Corridor Maintained Along Jenan



View Looking East on Jenan

Vegetation next to
Canty's has been
removed



Effect on Property Use



12 feet
between
existing wall
and house



Prior wall location

Practical Reality of Neighborhood Walls



#5
William & Shirlee Cobb
11775 N 101st Street
Scottsdale, AZ 85260
480-451-5998

Dear Neighbors:

Within the next several weeks, we will be submitting a Zoning Ordinance Variance to the Board of Adjustments at the City of Scottsdale for our property located at the corner of 101st Street and Jenan. Our property is the tan house on the southeast corner, which is undergoing substantial renovation, both inside and outside. We recently added approximately 900 square feet onto our house, having just received our Certificate of Occupancy from the City of Scottsdale.

The specific issue that requires the zoning variance is our side wall that is located along Jenan. Our property, which faces 101st Street, abuts the property owned by Anita and Tom Canty at 10135 Jenan. Anita and Tom's property is labeled as a "key lot" in that our side yard abuts their front yard. The zoning requirements for lots that abut a "key lot" are different from all other lots, in that the side yard setback for our lot is the same as the front yard setback for the "key lot." In practical terms, this means that the wall on the side of our property should be set at 40 feet from the street, while the zoning for all other lots in our general area is that side walls can be 15 feet from the street (there are several examples of side walls or landscaping that are this distance from the road along 101st and 102nd streets, as well as Jenan).

During initial discussions with City staff, our builder was told that we needed to comply with the 15 foot setback and we went ahead and constructed a new wall. We added some architectural interest by having the wall step out and back rather than having just the traditional straight-line design. We now know that the City's initial information was incorrect and the new wall is in violation of the zoning requirements.

There are several factors that the Board of Adjustments will consider in our application, including if the variance will be detrimental to the adjacent property owner and the neighborhood. We have discussed the variance application with Tom and Anita and they are agreeable to us pursuing the variance. Our next step is to determine if the neighbors in the immediate vicinity are agreeable or opposed to the variance. If there is substantial opposition to the variance, the request will likely be rejected and we will be forced to tear the wall down and reconstruct it in compliance with the 40-foot setback.

Our intent is to create a situation where the use of our backyard is significantly improved (gaining approximately 26 feet of side yard results in a dramatic increase in our useable open space). By both increasing the amount of useable backyard and installing and maintaining a high-quality desert landscape on the side yard next to the road, we believe that the overall value of our property will increase (which also benefits the overall

property values in the neighborhood). In contrast, maintaining a 40-foot side wall setback on our property doesn't materially improve the aesthetic aspects of the views on Jenan nor does it increase property value; there is no material difference in safety (line of sight down Jenan) with a 40-foot setback versus a 15-foot setback.

We are asking the neighbors in the vicinity of 101st and Jenan to provide us with feedback so that we can ascertain the viability of pursuing the zoning variance. Please indicate in the table below whether you: (1) can agree the variance will not be materially detrimental to the neighborhood; (2) are neutral to the requested variance; or (3) disagree that the variance will not be materially detrimental (in other words, do not support the variance request). We will submit the responses with our application.

Thank you, in advance, for your consideration on this personally important matter.

Name/Address	Date	Can accept the variance	Neutral to the variance	Opposed to the variance
Tom Canty 10135 E. Jenan	8/27/05	✓ yes		
Eric Kearney 10776 E Cortez	8/28/05	✓ yes		
Julia J. Jumper 10110	9/11/05	yes		
Don BLUTSTEIN 10500 E Cortez	9/11/05	yes		
Rich GOLDSAND 11675 N. 101 st	9/11/05	yes		
KAREN GROGAN 10155 E. Jenan	9/11/05	yes		
Alisa Urschel	9-13-05	yes		
Joan Bereski	9-21-05	yes		
Angie Jeminovic	9-21-05	yes		

November 11, 2005

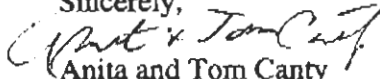
Dear Scottsdale Court,

We, Anita Canty and Tom Canty, live on what is considered a key lot next to 11775 N. 101st St., where the Cobb's live. While we were on vacation during the summertime, their block wall which defines the north side of their property was moved from 40 feet from the street to fifteen feet from the street. According to the city zoning commission, this move is not allowed, so the Cobb's have applied for a zoning change to allow them to keep their wall in the new position at fifteen feet from the street where our house is located.

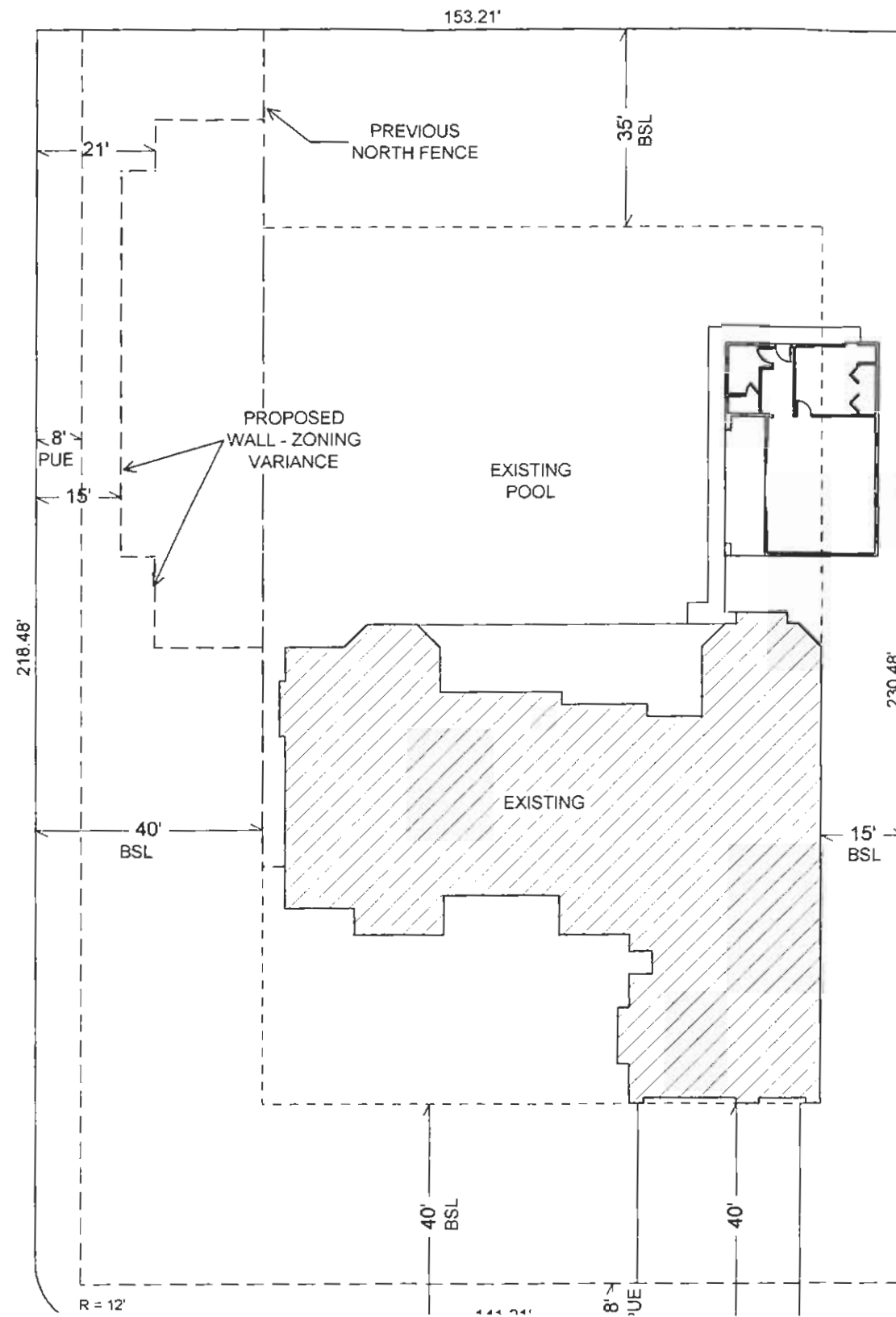
On a Saturday evening, after we returned from vacation, Shirlee Cobb came to our home to have us sign a letter stating that we would not mind the new position of the wall, which I did go on to sign that night. We originally thought that there would be no difficulty in seeing going out of the driveway. But we always go out of the driveway with the car facing the street, not thinking how it would be if we backed out of the driveway. When we experimented and started to back out of the driveway, we noticed that for some people, especially with longer vehicles or trucks, it may be more difficult to see clearly down the street and avoid bicycles or pedestrians or others approaching. So we believe that there may need to be some type of change in the wall from how it is now. We do not think that the wall needs to be moved all the way back to where it was, but perhaps part of the corner, that already is farther back, can be readjusted further. There also is a tree planted that also blocks some of our vision, and maybe that could be removed as well, to help with our vision.

So please consider all of these special issues, when deciding on whether to grant their zoning variance. Thank you very much.

Sincerely,


Anita and Tom Canty
10135 E. Jenan Dr.
Scottsdale, AZ 85260

13-BA-05
11-14-05



COBB RESIDENCE

11775 N. 101st St.
SCOTTSDALE, AZ 85260

CHEROKEE GLEN
LOT #4
APN: 217-26-466
SECTION 20
TOWNSHIP 3N
RANGE 5E

FEMA BLOCK

In accordance with FEMA and City requirements, the following information must be included on the cover sheet of all plans which establish lowest floor elevations and flood-proofing elevations for both residential and non-residential structures.

FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

Community Number	Panel Number	Panel Date	Suffix	FIRM Date	FIRM Zone	Base Flood Elevation (No zone, use depth)
045012	1705	7/19/01	F	7/19/01	X	N/A

SCALE 1" = 20'

